IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL (REVIEW) APPLICATION NO. 7 OF 2004
IN
FIRST APPEAL NO. 63 OF 1993.

Lina Cassiana Correia dos Martyres,
resident of Sataporio, Moira. .... Applicant.

Versus

1. Condorcet Nolasco Correia,
(deceased) through his legal
representatives:
i) Mrs. Valdermina Mascarenhas.
ii) Luis Mascarenhas, deceased,
through his legal representatives:
(a) Mrs. Beryl Sundam;
(b) Edwin Sundam,
both residents of Australia.

© Mrs. Amy D'Souza.
(d) Hector D'Souza,
both residing at Byculla, Bombay.

(e) Mrs. Celie Drakes.

(f) Spiro Drakes,
both residents of Australia.

(g) Mrs. Daisy Freitas.

(h) Roland Freitas,
both residents of Australia.

(i) Miss Elizabeth Mascarenhas,
resident of Bella Vista, Sangolda.

(j) Mrs. Hilda Afonso.

(iv) Mrs. Martha Maciel.
(v) Lazarus D'Cunha.

(vi) Mr. Almiro D'Cunha
(a) Mrs. Maureen D'Cunha,
both residents of Canada.
(vii)Miss Melanie D'Cunha.
(viii) John D'Cunha,
(a) Mrs. Magdalena D'Cunha,
resident of Bombay.
(ix) Jose B. Correia.
(x) Iris Correia.
(xi) Leena Correia.
(xii) Roberto J. Correia.
(xiii) Mrs. Joyce Correia.
(xiv) Ernesto Nicolau Correia.

2. Anita de Souza,
resident of Sataporio, Moira. .... Respondents.

Shri S.G. Dessai, Senior Advocate with Shri S. Kashalkar, Advocate for the Applicant.

None for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATE: 12th JANUARY, 2006.

ORAL JUDGMENT:

Heard the learned Senior Advocate for the Applicant. None present for the respondents though served.

2. Perused the Judgment and Order dated 8th February, 2002 passed in First Appeal No.63/93 and the relevant records.

3. By this application the applicant is seeking to review the Judgment

passed in the said appeal whereby while accepting the plea of the applicant regarding absence of any right in favour of Respondent No.2 to the suit properties or on the assumption that the respondent No.2 to be one of the co-owners, had rejected the prayer for eviction and recovery of possession of the suit properties from respondent No.2. It is the contention on behalf of the applicant that though the Court has accepted all the contentions on behalf of the applicant/appellant regarding absence of any right in respect of the respondent No.2 in relation to the suit properties and even the deeds which were executed by respondent No.1 in favour of respondent No.2 in relation to the suit property were declared to be null and void, on the wrong assumption that respondent No.2 would otherwise have co-ownership right in the properties, refused the relief of eviction of the respondent No.2 and for recovery of possession of the suit properties from her.

4. The relevant paras from the Judgment dated 8th February, 2002 in First Appeal read thus :-

" 63. In the circumstances, the appeal is allowed. The Order of the trial Court dated 23rd March 1993 passed in Special Civil Suit No. 36 of 1980 by the Civil Judge, Senior Division, Mapusa is set aside and the relief claimed in the plaint at prayer (a) is granted. The deed of mortgage dated 26-3-180 and the deed of gift also dated 26-3-180 are hereby

declared null and void. They be delivered up for cancellation. The suit is decreed accordingly in terms of prayer (a). Copy of this Order be sent to the Registrar of Assurances, Goa, where the said documents have been registered or lodged for registration with a direction to the concerned Officer to make a note on the copy of the instrument in his Book of the fact of cancellation of the said instruments.

64. Since the suit has been filed by the Plaintiff as co-owner along with defendant No.1 and the other co-owners, the prayer for eviction and recovery of possession of the suit properties cannot be granted. Plaintiff is at liberty to take appropriate proceedings for the same. ”

5. It is not necessary to go into all other details and/or to consider various other submissions made in the matter, suffice to observe that this Court had, in fact, allowed the appeal by holding that the deeds executed in favour of respondent No.2 by respondent No.1 were bad in law and therefore no right is created in favour of respondent No.2 in respect of the suit properties and apart from the said two sale deeds, no independent right was claimed by respondent No.1 in relation to the suit properties. Indeed the relevant issues which were framed in this regard read thus :-

“ Whether the plaintiff proves that

the mortgage deed by which the defendant No.1

mortgaged in favour of the defendant No.2 the house property referred to in paragraph 1 of the plaint, is null and void ?

Whether the plaintiff proves that the deed by which the defendant No.1 gifted to the defendant No.2 all the remaining properties mentioned in paragraph 1, is null and void ? ”

6. Undisputedly both the Issues were answered in the affirmative and that is apparent on the face of the record and particularly from para 63 of the Judgment quoted above. Having held so, obviously the plaintiff being considered as the co-owner along with other co-owners and the respondent No.2 having no right whatsoever in the suit properties, the order of eviction of respondent No.2 and recovery of possession ought to have followed as a consequential relief of the said declaration. Apparently, while rejecting the said relief, the Court proceeded on the assumption, as rightly argued by learned Senior Counsel on behalf of the applicant, that respondent No.2 to be the co-owner. As already seen above, respondent No.2 is a total stranger to the properties in question, she having no right otherwise than under the said deeds which have already been declared null and void. Hence there is error apparent on the face of the record in para 64 of the said Judgment to the extent that instead of granting relief of recovery of possession of the suit

properties, the same was rejected. In view of the findings as above, the para 64 therefore needs to be corrected as follows:-

" Since the suit has been filed by the plaintiff as co-owner against defendant No.1 and the other co-owners and respondent No.2 having no right whatsoever to the suit properties, the prayer for eviction and recovery of possession of the suit properties from defendant No.2 has to follow as a consequential relief and is hereby accordingly granted. "

7.

Consequently the Review Application is allowed to the extent it is stated hereinabove and the decree shall accordingly stand modified. Review Application stands disposed of.

R.M.S. KHANDEPARKAR, J.

sl.